



June 8, 2000

Mr. Miles Risley  
City Attorney  
Legal Department  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR2000-2230

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136823.

The City of Victoria (the "city") received a written request for all police records pertaining to a named individual. You contend that some of the offense reports coming within the ambit of the request are made confidential by laws outside the Public Information Act and thus must be withheld from the public pursuant to section 552.101 of the Government Code. You further contend that, except for the categories of information specifically made public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the remaining responsive offense reports are excepted from required public disclosure pursuant to section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) One of the offense reports at issue, number 9313630, pertains to an investigation of the sexual assault of a child. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

You have not informed this office of any rules the city has adopted that would permit access to this offense report. Accordingly, this office concludes that the city must withhold number 9313630 in its entirety pursuant to section 261.201 of the Family Code. *But see* Fam. Code § 261.201(b) (provision for court ordered access), (f) (limited right of access to records held by Department of Protective and Regulatory Services).

Some of the offense reports at issue relate to reports of juvenile conduct that occurred before January 1, 1996. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided as follows:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Despite the repeal of section 51.14(d), law-enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential under that section.<sup>1</sup> Because offense reports numbers 9503597, 9417800, 693121, and 650543 pertain to juvenile conduct that occurred prior to January 1, 1996, we conclude that these records are governed by section 51.14(d) of the Family Code and that the city must withhold these records in their entirety. *See also* Open Records Decision No. 181 (1977).

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<sup>1</sup>See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Gen. Laws 2591 (Vernon).

Finally, you contend that the remaining offense reports, numbers 1608-00, 9915936-00, 9819345-00, 9819159-00, and 671826-00, are excepted from public disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Based on your representation that these cases “are currently being investigated by the Victoria Police Department for presentation to the Victoria County District Attorney,” we conclude that you have met your burden of demonstrating the applicability of section 552.108(a)(1) to cases numbers 1608-00, 9915936-00, 9819345-00, and 9819159-00, and may therefore withhold these records at this time.

We note, however, that offense report number 671826-00 concerns a bicycle theft, with a loss between \$50 and \$500, that occurred in 1991. This crime constituted a misdemeanor. Penal Code § 31.03(e)(2)(A). The limitations period for misdemeanor charges is two years from the date of the commission of the offense. Code Crim. Proc. art. 12.02. Because the theft occurred in 1991, this offense is not subject to prosecution. You have not demonstrated how the release of this offense report “would interfere with the detection, investigation, or prosecution of crime.” Consequently, the city must release offense report number 671826-00 to the requestor.

To summarize, the city must withhold the following offense reports: number 9313630 pursuant to section 261.201 of the Family Code, and numbers 9503597, 9417800, 693121, and 650543 pursuant to section 51.14(d) of the Family Code. The city may withhold the following offense reports pursuant to section 552.108(a)(1) of the Government Code: numbers 1608-00, 9915936-00, 9819345-00, and 9819159-00. Finally, the city must release offense report number 671826-00 in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

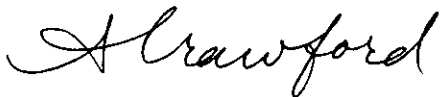
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/RWP/ljp

Ref: ID# 136823

Encl. Submitted documents

cc: Ms. Lisa Hartman  
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P.O. Box 550  
Victoria, Texas 77902-0550  
(w/o enclosures)